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ABSTRACT

Although a relatively new area of scientific study, theory and research on nonverbal communication in the courtroom has produced important findings for students and practitioners in five key areas: voire dire and jury analysis; opening and closing statements; client demeanor and direct examination; cross-examination; and judge demeanor and communication. During "voire dire," attorneys should build rapport with potential jurors by using warm nonverbal behaviors such as close distances, eye contact, and soft vocal tones. Research suggests that good rapport may be associated with an interactants' adopting similar postures (mirroring), speech styles, facial expressions, and patterns of coordinated movement. In general, an attorney's delivery is likely to be helped by such factors as a moderately fast speech rate, fluent speech, strong eye contact, channel consistency, confident and varied tones, a direct and conversational style, natural gestures, the avoidance of body adaptors, and purposeful movement. With regard to the jury's assessment of a client, research shows that attractiveness, attire, physical features, and body language are all important. In contrast to direct examination, cross examination calls for nonverbal tactics that discredit the witness; body language is used to intimidate or demean the witness. Finally, judges may signal to the jury through body language how they feel about a defendant's case. A functional model, consisting of 16 enumerated points, assumes that nonverbal signals combine to serve important communicative goals. (Contains 32 references and one figure.) (TB)

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The Importance of Nonverbal Communication in the Courtroom

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Abstract

This essay reviews the empirical research on nonverbal communication in the courtroom environment and introduces a functional model that explicates the process whereby various nonverbal signals of courtroom participants combine to influence the deliberation of a jury. Although a relatively new area of scientific study, findings are available pertaining to the role of nonverbal communication in five key areas: voire dire and jury analysis; opening and closing statements; client demeanor and direct examination; cross-examination; and judge demeanor and communication. Conclusions based on this body of research are presented in the form of several propositions but should be qualified in view of the fact that few studies have been done in the courtroom context.

The Importance of Nonverbal Communication in the Courtroom

It is now well documented that nonverbal signals serve many functions necessary for effective human interaction. Some of the most important of these are: (a) expressing our identity (e.g., culture, personality, gender, values, etc.); (b) communicating our attitudes and feelings (e.g., positive-negative feelings and feelings of superiority-inferiority, as well as basic emotions such as anger, joy, fear, etc.); (c) creating first impressions of ourselves and stereotyping others; (d) structuring and facilitating the flow of an interaction (e.g., nonverbal actions serve as the "traffic signals" which direct the turn- taking among speakers and listeners); (e) influencing others; (f) assisting in the production and comprehension of speech; and (g) allowing us to engage in deception and to send "mixed" messages (see Burgoon, Buller, & Woodall, 1989 for an extensive analysis of these functions).

Despite the general importance of nonverbal behavior, in virtually all communicative contexts, little has been done to synthesize what we know about the impact of nonverbal communication in the courtroom environment. This is unfortunate in light of the fact that few contexts depend more on the uses of both spoken and unspoken discourse. Indeed the judgments of attorneys, jurors, clients, witnesses, and judges are heavily influenced by the continuous exchange of nonverbal signals. The guilt or innocence of a defendant, the credibility of a witness, the persuasiveness of an attorney, and the truthfulness of a prospective juror may hang in the balance. As LeVan (1984) points out:

> In the courtroom, nonverbal communication subtly affects the entire proceedings of a trial. It is constantly present and being asserted, yet the attorney is often unaware of

its existence. Gestures and facial expressions are transmitted and observed by every individual in the courtroom. The attorney in her opening statement uses gestures and eye contact to persuade the jury. The judge silently communicates her feelings about the case to the jury through her posture and facial expressions. The client unwittingly sends messages to the jury through his general appearance and the clothing he wears. A witness on the stand, under the scrutiny of the jury, reveals more through fidgeting with his clothes and shifting his body than he does through his testimony. (p.83)

In this essay I will begin by examining what we now know, from empirical research, about the importance of nonverbal communication with respect to: voire dire and jury analysis, opening and closing statements, client demeanor and witness examination, cross examination, and judge demeanor and communication. These findings have clear implications for both students and practitioners interested in communication and the legal process. Following my review of the literature, I'll present a *functional model* of nonverbal communication in the courtroom that explicates the manner in which juries may be influenced by the nonverbal signals of courtroom participants. In addition, the model will include a number of propositions that may be useful in guiding future research.

Research on Nonverbal Communication in the Courtroom

Voire Dire and Jury Analysis

There are numerous recommendations about the way attorneys should conduct themselves during voire dire in order to build rapport with and elicit information from potential jurors. Building rapport includes the use of "warm" nonverbal behaviors (e.g., close distances, eye contact, smiles, soft vocal tones, etc.) and the avoidance of

antagonistic cues (e.g., sarcastic tones, turning away, intimidating gestures, etc.). There is also a growing body of evidence that various forms of synchrony and motor mimicry may be related to rapport among interactants, either as a stimulant or consequence of positive feelings. These findings suggest that rapport may be associated with interactant's adopting similar postures (mirroring), speech styles, facial expressions, and patterns of coordinated movement (Hatfield, Cacioppo, and Rapson, 1994).

Getting prospective jurors to open up/self-disclose also requires the use of certain behaviors that are known to "reinforce" the utterances of a speaker. In an experiment on the effects of anxiety and nonverbal involvement behavior, for instance, Remland and Jones (1989) found that interviewees spoke significantly longer in response to the personal questions of an interviewer when the interviewer used a direct body orientation, vocal backchannels, head nods, and eye contact than when the interviewer did not. This effect was obtained regardless of whether or not subjects were apprehensive about participating in the interview. Matlon (1988) offers one of the more thorough discussions of nonverbal communication during voire dire. Among some of his specific suggestions are for attorneys to avoid: standing too close or too far from the individuals who are being questioned (about 3-6 feet is recommended), interrupting, using an angry tone of voice, and staring.

Since true feelings and attitudes are more likely to be conveyed nonverbally than verbally, what a prospective juror says in response to a question may be less informative than how it is said. People generally have more conscious control over their words than their nonverbal signals. In this regard, facial expressions, gaze behavior, voice changes,

and body movements--especially when they are not consistent with what has been said--ought to be deciphered. These nonverbal messages might reveal the true attitudes (and thus biases) of prospective jurors toward the attorney, the defendant, or the crime. In addition, the ability to detect deception may prove useful (Matlon, 1988). The research on this, however, will be discussed in the section below on the topic of cross-examination.

Opening and Closing Statements

The persuasive skills of the attorney must include the ability to deliver a statement in a credible manner. More than two decades of research on speaker credibility and nonverbal communication provide a wealth of information about the specific nonverbal behaviors that tend to increase or decrease audience judgments of how dynamic, sincere, and competent a speaker is (see Burgoon, Buller, & Woodall, 1989 for a review of this literature). Also, several studies in the courtroom context show that perceptions of attorneys and judgments of guilt or innocence can be influenced by the attorney's nonverbal communication.

In general, the delivery of an attorney is likely to be helped by such factors as: a moderately fast speech rate, fluent speech, strong eye contact, channel consistency, (i.e., avoiding contradictions between one's words and facial expressions as well as between two different nonverbal channels such as one's voice and body movements), confident and varied tones, a direct and conversational style, natural gestures, the avoidance of body adaptors (self-touch), and purposeful movement (Burgoon, Buller, & Woodall, 1989). In a recent investigation, Burgoon, Birk, and Pfau (1990) analyzed the nonverbal behavior of undergraduate students who were assigned to deliver in-class persuasive speeches. They

discovered, in part, that speakers were judged as more persuasive when they exhibited greater vocal pleasantness (e.g., pitch variety and fluency), kinesic/proxemic immediacy (e.g., eye contact, body lean, orientation), facial expressivenes, and kinesic relaxation (e.g., tension-free random movement).

The subject of effective nonverbal style in opening and closing statements has also received considerable attention (Matlon, 1988; Rieke & Stutman, 1990). Several studies are available that have investigated the impact of an attorney's speaking style on credibility ratings and judgments of guilt. One study reported in Rieke & Stutman (1990) found that "aggressive" prosecuting attorneys (fast rate of speech, a lot of eye contact, emotional gestures, hostile vocal inflections, and high volume) were rated by jurors as more effective than either passive or assertive attorneys. And "passive" attorneys were the least able to obtain guilty verdicts. Barge, Schlueter, & Pritchard (1989) also studied the effects of an attorney's nonverbal communication. In an opening statement delivered to undergraduates they found that fluent speech increased ratings of competence, a conversational style of speaking led to perceptions of trustworthiness, and non-fluent speech delivered in a public rather than in a conversational style was the least successful in getting a not guilty verdict. In a related study, the influence of vocal cues--male or female--on perceptions of a defense attorney's closing remarks was examined (Hodgson & Pryor, 1984). Results indicated a possible gender-bias in that women evalulated the female attorney less favorably (e.g., less intelligent, less friendly, less expert, less experienced) than they evaluated the male attorney.

One possible application of nonverbal theory to the performance of attorneys in the courtoom involves expectancy violations (McPeek & Edwards, 1975; Burgoon, 1983). Briefly, the theory holds that a communicator may become more persuasive by engaging in nonverbal behavior that violates the expectations of message recipients. This positive outcome is most likely when the communicator is highly regarded at the outset (referred to as "reward value"). For example, a respected attorney might gain credibility with admiring jurors by standing closer or speaking louder than they expected. In discussing the attire of an attorney, LaVan (1984) illustrates how this theory might work in the courtroom: "an attorney might want to switch her conservative and conventional style of dress for a more colorful and casual look. If she does alter her style of dress, then presents a logical and strong argument, she might violate the jurors' expectations and thus be more persuasive"(p. 97).

Client Demeanor and Witness Examination

Because jurors have visual access to the defendant throughout a trial, the stereotyped impressions they form, based on physical appearance and demeanor, can be extremely significant to the outcome of the trial. Here, research on attractiveness, attire, physical features, and body language can be quite informative.

With regard to general attractiveness, researchers have confirmed a "what is beautiful is good" hypothesis--that people tend to assign positive attributes to good looking individuals. In particular, attractive defendants are seen as less guilty of a crime than their unattractive counterparts (unless their looks somehow help them commit the crime), and may tend to receive lighter sentences. This "halo effect" for appearance in the courtroom

has been examined in several studies. In one of the earliest experiments, Efran (1974) found that, even though more than ninety percent of the subjects questioned said it would be unfair to allow a defendant's looks to influence judgments of guilt or innocence, male subjects were more likely to find an unattractive student guilty of cheating than an attractive student and were more likely to recommend harsher punishment for the unattractive student as well. Kulka and Kessler (1978) examined the impact of physical attractiveness in a trial simulation involving automobile negligence. Subjects were more likely to find for the plaintiff when the plaintiff was attractive and the defendant was unattractive than when the condition was reversed. The attractive plaintiff was also awarded significantly more in damages than was the unattractive plaintiff. In an attempt to study how "average" looking defendants might be treated when compared to those who are attractive or unattractive, Solomon and Schopler (1978) reasoned that persons with average looks may be less likely to benefit from either a halo effect (attractive persons) or a sympathy vote (unattractive persons). Subjects were asked to evaluate a case involving a woman accused of embezzlement. The woman was either attractive, unattractive, or average-looking. As expected, male subjects were influenced by the woman's looks: the attractive woman received the shortest sentence; but the average-looking woman received the longest.

In the special case of rape and sexual assault trials the looks of both the victim and the perpetrator can be particularly salient to jurors who might doubt the claims of a homely accusor, question the denials of an ugly defendant, or trust the allegations of a beautiful victim. After reading a description of a case in which a woman is assaulted and raped

walking to her car, subjects in one study (Jacobson, 1981) were more likely to believe the woman's identification of the perpetrator if he was ugly than if he was handsome. In addition, if assumed guilty, the unattractive man received a much longer jail sentence than did the attractive man. Similar results have been obtained in other studies of sexual crimes (Deitz & Byrnes, 1981; Thornton, 1977).

Despite the evidence of a link between attractiveness and judicial outcome, it would be incorrect to overlook exceptions to the general rule. In their review of the literature, Hatfield and Sprecher (1986) identify the following factors:

1. The influence of attractiveness seems to depend on the kind of crime committed. Good looking defendants may be penalized if they are on trial for a crime in which looks may have helped them commit the crime (e.g., swindling).

2. The more serious the crime is, the less likely jurors are to be swayed by the attractivness of a defendant. They cite the example of a study involving a traffic accident case. When the consequence of the accident was trivial an attractive female defendant was given a lighter sentence than an unattractive defendant; when the accident resulted in the killing of an innocent motorist the attractive defendant actually received more punishment than the unattractive defendant.

3. Some research suggests that the advantage of being attractive is greatly diminished by the process of jury deliberation. That is, even when individual jurors are biased in favor of a good looking defendant, the bias may be held in check as a result of group interaction. In addition, this effect seems to be heightened in cases requiring jurors to assimilate significant amounts of factual evidence.

There is little empirical research on the influence of clothing in the courtroom. In general practice, clothing and demeanor should adhere to the norms of the court which require that all participants be respectful, attentive, and professional. Advice can be found, in this regard, about such matters as: proper posture, wearing of uniforms, hair length, dress color, eye glasses, use of jewelry, chewing gum, interacting with others and so forth. In his discussion of police officers as witnesses, for instance, Waltman (1984) recommends that officers who testify in civilian clothes should dress conservatively (e.g., suit and tie, no flashy colors or big plaids, dresses rather than pants for women, etc.), and when wearing a uniform should be sure it is neatly pressed and uncluttered with police paraphenalia (e.g., flashlight, nightstick, mace, handcuffs, etc.).

Some studies have examined the biasing effect of a defendant's facial expressions and have discovered that it does influence perceptions of guilt, seriousness of the crime, and severity of punishment. Savitsky and Sim (1974) varied the facial expressions of a defendant giving testimony as either angry, happy, sad, or neutral . Results showed that the crime (petty theft and vandalism) was viewed as less serious, the defendant was seen as less likely to commit another crime, and the defendant received less punishment with a sad or neutral expression than with a happy or angry face. The angry facial expression elicited the most unfavorable reaction. Forgas, O'Connor, & Morris (1983) also studied the impact of facial expression from the perspective of the "what is beautiful is good" hypothesis. That is, if a smiling face is viewed as more attractive than an unsmiling face, smiling might elicit more positive perceptions--it might result in a halo effect. In their study subjects read descriptions of a crime with photographs of the offender attached.

They found that the person in the photograph was judged as less responsible and treated more leniently when smiling than when not smiling.

Even the facial features of a defendant have been linked to jury perceptions. For example, some research shows that individuals with "baby-faced" features (e.g., large eyes, small nose, small chin, bulbous forehead) tend to be seen as more innocent and naive than their more "adult-faced" counterparts. A study by Berry and McArthur (1986) investigated the influence of a defendant's craniofacial maturity on judgments of guilt or innocence in a simulated trial. They found that defendants with babyish features were more likely to be seen as guilty of a negligent offense (forgetting to warn a customer about the potential hazards of a product he was selling) than defendants with mature features; but that the reverse was true for judgments pertaining to intentional deception (misleading a customer about the dangers of a product in order to make a sale). Apparently, baby-faced people are seen as more likely to be negligent; mature-faced people are seen as more likely to be deceptive--stereotypes with obvious implications for the courtroom. Other studies have linked facial disfigurements to perceptions of abnormal or deviant behavior (see, for example, research reported in Rieke & Stutman, 1990, p. 129).

With respect to the impact of a defendant's physical appearance on a jury, Rieke and Stutman (1990) caution against overestimating the effect. They identify two important factors: (a) As the severity of a crime increases, the impact of appearance decreases; and (b) the impact of appearance is likely to be far less significant in cases with strong evidence as opposed to weak evidence (p. 129).

Since direct examination of witnesses is a matter of credibility, the material here is similar to that discussed above concerning opening and closing statements (e.g., eye contact, fluent speech, natural gestures, avoiding self-touch, etc.). Of special significance, perhaps, is the need for nonverbal-verbal consistency in the delivery of emotional content (i.e., if one is discussing something sad one should look and sound sad). And, one should avoid nonverbal behaviors known to be associated with the stereotype of a liar (e.g., shifting gaze, squirming in seat, fidgeting, perspiring, etc.), or of an evasive person (e.g., lack of spontaneity, overly long pauses, etc). Hemsley and Doob (1978) found, for instance, that a witness testifying on behalf of a defendant was judged as less credible when looking slightly downward while speaking (gaze aversion) than when looking directly toward his audience. The defendant was also more likely to be seen as guilty when the witness averted his gaze than when it was maintained. A study by Pryor and Buchanan (1984) examined the impact of a defendant's level of anxiety (presented during testimony as high, moderate, or low) on juror ratings of credibility and the jury's verdict. The defendant's level of anxiety was manipulated by varying the degree of self-touching, eye contact, and speech hesitations. The defendant was seen as most credible and least guilty in the low-anxiety condition. He was seen as most guilty in the moderate-anxiety condition.

A final application of nonverbal communication research worth noting involves work in the area of emotional contagion. In short, the basic thesis holds that individuals may "catch" the emotions of those around them and that some persons may be more suseptible to this phenomenon than others. Hatfield, Cacioppo, and Rapson (1994) have recently

summarized this body of research. They found sufficient evidence to support a theory of emotional contagion which, in part, suggests that: (a) people tend to mimic the emotional expressions of others (e.g., voices, facial expressions, postures, movements); (b) the actual experience of emotion is affected by the feedback resulting from such mimicry; (c) as a result, people tend to "catch" others' emotions. In addition, individuals may vary in their tendencies to be infected. They hypothesize, based on the available literature, for example, that people should be more likely to catch the emotions of others if : their attention is riveted on the others' expressions, they are interdependent rather than independent in their orientation to others, they are able to read the emotions of others, and they are emotionally expressive. The potential implications of this work for the courtroom seem obvious in that jurors are placed in a highly charged, emotion-laden environment. A typical courtroom strategy in recent years has been for defense attorneys to portray their clients as "victims" of some kind of abuse (i.e., the "abuse as an excuse" scenario). Presumably, if jurors are made to feel the despair of the defendant, they may be less likely to render a guilty verdict and may be more lenient in their recommendations.

Cross Examination

In contrast to direct examination, attorneys here use nonverbal tactics to discredit the witness; to damage rather than build credibility. In addition, nonverbal signs of deception become especially important. First, with respect to credibility, the attorney often uses nonverbal behavior to intimidate or demean the witness, as appropriate (probably not advisable for persons likely to evoke the sympathy of a jury, e.g., children, disabled, elderly, etc.). A great deal is known about the power and dominance conveyed through:

staring, loud vocal tones, frowns, pointing gestures, close distances, indirect orientation, deliberate silence, smiles, and so forth. Indeed, these "nonverabal displays of status" are subtle signs of disrespect (Remland, 1982) and although they can be used to intimidate, some research suggests that overly "hostile" cross-examination tactics may reduce an attorney's perceived effectivness (Gibbs, 1987). While an attorney may use nonverbal tactics to "ruffle" the witness, it is equally important that the attorney's nonverbal behavior stays "unruffled" in response to the witness (e.g., absence of hesitations, awkward movements, etc.) in order to maintain the poise required for enhanced credibility.

Because persons have less conscious awareness of and control over the nonverbal channel of communication than the verbal channel, their nonverbal messages may be more truthful than their spoken words. In order to detect deception, special notice might be made of changes in what seem to be the ten most reliable nonverbal indicators: vocal pitch, hesitations, speech errors, response length, blinking, pupil dilation, adaptors, channel discrepancies (Burgoon, Buller, & Woodall, 1989), false smiles, and illustrators (Ekman, et al., 1991). However, this is an area where attempts to apply the research to actual courtoom situations may not be advisable. Cautions about trying to detect deception from nonverbal clues include:

1. For comparison purposes, accurate "baseline" readings are needed (i.e., how often does a speaker hesitate when telling the truth?).

2. Nonverbal signals of deception are also signals of nervousness or anxiety. Knowing which, may be difficult if not impossible--especially in a courtroom setting. Also, truthful

people often look like they're lying when they feel they're not being believed (what Ekman (1986) refers to as the "Othello effect").

3. Accurate and objective measurements are likely to be difficult, if not impossible, to obtain given the physical surroundings of a courtroom.

4. It is likely that, even under the best of circumstances, the error rate will be unacceptably high. Even "confident" lie detectors usually don't exceed a 50-60 percent success rate.

Judge Demeanor and Communication

The nonverbal behavior of the judge during a trial has been investigated to determine what it may reveal and the effects it may have on the jury. One study found that the gaze pattern of the judge may be informative (Dorch and Fontaine, 1978). Specifically, that the race of the judge influenced who was looked at (i.e., black judges gazed most at white defendants; white judges gazed most at black defendants), and that the longer a judge gazed at a defendant, the greater the defendant was fined if found guilty.

In terms of the judge's communication, some research points to the existence of nonverbal expectancy effects. That is, when judges believe a defendant is guilty they may signal that belief nonverbally to the jury through facial expression, tone of voice, and various other actions. Research shows that these cues can influence the verdict of a jury (Hart, 1991; Blank, et al., 1985). As Blanck, Rosenthal, and Cordell note: "It is possible that when judges expect or predict a certain trial outcome, they intentionally or unintentionally "appear" to behave toward jurors in a way that indicates what they think the outcome should be, thereby setting into motion behaviors and trial processes that

increase the likelihood of the occurrence of a certain trial outcome" (p. 91). In some cases, documented bias in the form of a judge's nonverbal communication can be sufficient grounds for appeal (Blanck, et al., 1992; LeVan, 1984). In the most far reaching study to date, Blanck, Rosenthal, and Cordell (1985) examined videotapes of five California Municipal Court judges delivering final jury instructions to jurors in 34 actual criminal trials. In part, their results indicated that the nonverbal behavior of the judges was biased by the criminal records of defendants. As they observe: "The findings suggest that the subtle nonverbal cues of the judge might "leak" the judge's expectations for trial outcome, expectations perhaps (but not necessarily) formed from the judge's knowledge of the defendant's criminal history" (p.124).

A Functional Model of Nonverbal Communication in the Courtroom

A functional model assumes that multiple nonverbal signals combine to serve important communicative goals. In the context of a jury trial, the model presented here shows how the nonverbal behaviors of attorneys, clients, witnesses, and judges function to influence jurors during the trial. Figure 1 depicts the primary elements in the model. As the model shows, the nonverbal communication of courtroom participants functions in five distinct ways to influence the outcome of a trial by jury. These nonverbal signals can: (a) alter judgments of credibility; (b) facilitate self-disclosure; (c) foster attitudes of liking or disliking; (d) spread emotions; and (e) produce expectancy effects. Each of these functions can, in turn, directly influence the members of a jury, whether they are aware of it or not. Based on the available research, several propositions can be advanced, further elaborating the association between nonverbal communication and the functions noted above:

Altering Credibility Judgments

1. The opening and closing statements of attorneys, and the testimony of witnesses are likely to be more convincing with: fluent speech, moderately fast speech rates, eye contact, the avoidance of inconsistencies across different channels, strong and varied vocal tones, the use of purposeful rather than self-conscious movements, and the use of forceful but natural gestures.

2. Courtroom participants may gain credibility if they violate the nonverbal expectations of jurors.

3. Physically attractive persons may benefit from a "halo effect" whereby their looks help them to be perceived as more credible and less blameworthy.

4. Numerous nonverbal signals may provide clues to deception from prospective jurors and witnesses. But, the accurate interpretation of these signals is problematic.

5. If they wish to be seen as credible, witnesses should seek to avoid nonverbal behaviors associated with the stereotype of a liar (e.g., averting gaze, hesitating, shifting positions/postures, fidgeting, perspiring, etc.) or of an evasive person (e.g., long response latencies, long pauses, etc.).

6. Nonverbal displays of status and power (e.g., staring, pointing, loud speech, close proximity, turning away, smiling, etc.) may serve to intimidate a witness during cross-examination which may undermine the credibility of the witness.

7. Facial expressions of sadness or no emotion are more likely to evoke favorable judgements of defendants than will expressions of anger or joy . In some cases a defendant may benefit from the "halo effect" if a smile is seen as attractive.

8. Facial features can influence impressions of guilt or innocence. Persons with baby-faced characteristics may be seen as more "innocent" than persons with mature-faced features. Or, they may be seen as more likely to commit certain kinds of crimes (i.e., those involving carelessness, negligence).

Facilitating Self-Disclosure

9. Attorneys can use "warm" and "nonantagonistic" nonverbal behaviors to build rapport with prospective jurors and "reinforcing" cues to encourage self-disclosure from them.

Fostering Attitudes of Like and Dislike

10. Attorneys and others may be able to affect jurors' attitudes toward them with the use of warm, "immediate" and synchronous nonverbal cues.

11. The overall clothing and demeanor of witnesses is less likely to result in negative evaluations i. witnesses adhere to the norms of the court, which require all participants to be respectful, attentive, and professional, than if they do not. This implies that individuals avoid various forms of "rude" behavior (e.g., chewing gum, shouting, laughing, etc.) and dress in a conservative manner.

12. Based on the "what is beautiful is good hypothesis," jurors are more likely to be attracted to good-looking courtroom participants than unattractive ones.

13. Regarding the importance of physical appearance, the impact on the outcome of a trial will lessen as the severity of the crime increases and as the strength of the evidence increases.

Spreading Emotions

14. Members of a jury may catch and subsequently feel the emotions of key courtroom participants.

15. Certain individuals on a jury may be more vulnerable to emotional contagion than others on the jury.

Producing Expectancy Effects

16. The nonverbal behavior of the judge may reveal concealed attitudes and biases toward persons in the courtroom and may produce expectancy effects on the jury (i.e., the judge nonverbally signals his/her expectations to the jury which influences their decision).

Conclusion

In spite of the obvious impact of nonverbal communication in the courtroom, the empirical research in this area is far from definitive. Many of the recommendations about how to act and what to wear, in particular, are based either on anecdotal evidence, an insufficient number of studies, or studies conducted outside the courtroom context. Thus, the findings reported here should be interpreted with considerable caution. Indeed, almost without exception, weaknesses in the ecological validity of the research (e.g., use of college students as jurors, unrealistic stimulus materials, rendering decisions without real consequences, etc.) make it quite difficult to generalize to the courtroom environment. This is a relatively new area of scientific research however, that is bound to attract the interest of scholars across an array of disciplines. Perhaps the functional model offered here can provide a useful focus for those interested in studying the pervasive influence of nonverbal communication in the courtroom.

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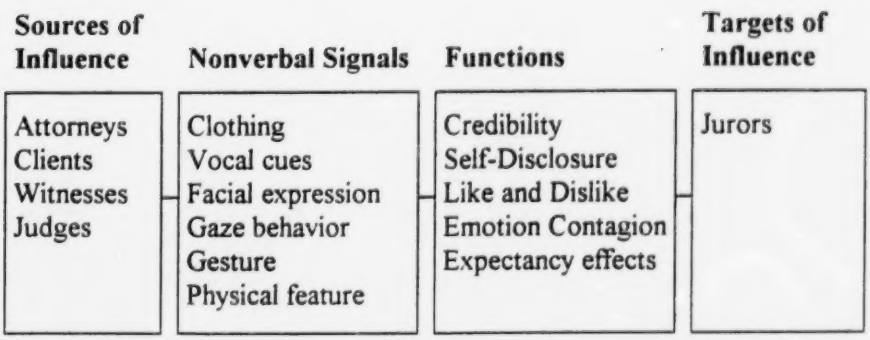

Figure 1: A Functional Model of Nonverbal Communication in the Courtroom